

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

GAYLYN V. MILLER,

Plaintiff,

v.

Civ. No. 18-0753 WJ/KBM

NANCY A. BERRYHILL, *Acting  
Commissioner of Social Security Administration,*

Defendant.

**PROPOSED FINDINGS OF FACT  
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Plaintiff's Motion to Proceed In Forma Pauperis Pursuant to 28 U.S.C. § 1915. *Doc. 1*. The Court may authorize the commencement of any suit without prepayment of fees by a person if she: (1) submits an affidavit that includes a statement of all assets she possesses and (2) is unable to pay such fees. 28 U.S.C. § 1915(a). In determining whether a movant is unable to pay within the meaning of Section 1915, the Tenth Circuit has indicated that "[o]ne need not be absolutely destitute to proceed IFP." *Lewis v. Ctr. Mkt.*, 378 F. App'x 780, 785 (10th Cir. 2010) (unpublished). Nevertheless, a motion to proceed IFP may properly be denied if the movant *can* pay the required fees and still support and provide necessities for herself and any dependents. *Id.*

In her affidavit, Plaintiff states that: (1) her and her husband's combined monthly income is \$3,743.00; (ii) their monthly household expenses are approximately \$1,641.31, inclusive of payments on credit card debt; (iii) they have \$900.00 in cash in

banks or savings and loan associations; and (iv) they also have approximately \$104,000.00 in an individual retirement account. See *Doc. 1*.

Thus, it appears that Plaintiff is able to pay the \$400.00 filing fee for instituting a new case, because her and her spouse's combined monthly income and cash exceed their monthly expenses. See *Brewer v. City of Overland Park Police Dep't*, 24 F. App'x 977, 979 (10th Cir. 2002) (litigant whose monthly income exceeded his monthly expenses by a few hundred dollars appeared to have sufficient income to pay filing fees and thus was not entitled to IFP status) (unpublished).

Wherefore,

**IT IS HEREBY RECOMMENDED** that Plaintiff's Motion to Proceed IFP be **denied**.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE** of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**

  
UNITED STATES MAGISTRATE JUDGE